

EN BANC

[A.C. No. 11504, August 01, 2017]

**ARIEL G. PALACIOS, FOR AND IN BEHALF OF THE AFP
RETIREMENT AND SEPARATION BENEFITS SYSTEM (AFP-RSBS),
COMPLAINANT, VS. ATTY. BIENVENIDO BRAULIO M. AMORA, JR.,
RESPONDENT.**

DECISION

PER CURIAM:

The instant administrative case arose from a Complaint dated March 11, 2008^[1] filed by Ariel G. Palacios, in his capacity as the Chief Operating Officer and duly authorized representative of the AFP Retirement and Separation Benefits System (AFP-RSBS), seeking the disbarment of respondent Atty. Bienvenido Braulio M. Amora, Jr. for alleged violation of: (1) Canon 1, Rules 1.01 to 1.03; Canon 10, Rules 10.01 to 10.03; Canon 15, Rule 15.03; Canon 17; Canon 21, Rule 21.01 and 21.02 of the Code of Professional Responsibility (CPR); (2) Section 20, Rule 138 of the Rules of Court; (3) Lawyer's Oath; and (4) Article 1491 of the Civil Code.

The Facts

The facts as found by the Integrated Bar of the Philippines, Board of Governors (IBP-BOG), are as follows:

Complainant is the owner[-]developer of more or less 312 hectares of land estate property located at Barangays San Vicente, San Miguel, Biluso and Lucsuhin, Municipality of Silang, Province of Cavite ("property"). Said property was being developed into a residential subdivision, community club house and two (2) eighteen[-]hole, world-class championship golf courses (the "Riviera project"). In 1996, complainant entered into purchase agreements with several investors in order to finance its Riviera project. One of these investors was Philippine Golf Development and Equipment, Inc. ("Phil Golf"). On 07 March 1996, Phil Golf paid the amount of Php54 Million for the purchase of 2% interest on the Riviera project consisting of developed residential lots, Class "A" Common Shares, Class "B" Common Shares, and Class "C" Common Shares of the Riviera Golf Club and Common Shares of the Riviera Golf Sports and Country Club.

On 02 June 1997, complainant retained the services of respondent of the Amora and Associates Law Offices to represent and act as its legal counsel in connection with the Riviera project (Annex "C" to "C-5" of the complaint). Respondent's legal services under the said agreement include the following: issuance of consolidated title(s) over the project, issuance of individual titles for the resultant individual lots, issuance of license to

sell by the Housing and Land Use Regulatory Board, representation before the SEC, and services concerning the untitled lots included in the project. For the said legal services, respondent charged complainant the amount of Php6,500,000.00 for which he was paid in three different checks (Annexes "D" to "D3" of the complaint).

On 10 May 1999, complainant entered into another engagement agreement with respondent and the Amora Del Valle & Associates Law Offices for the registration of the Riviera trademark with the Intellectual Property Office (Annex "E" of the complaint) where respondent was paid in check in the amount of Php158,344.20 (Annex "F" of the complaint).

On **14 March 2000**, another contract for services was executed by complainant and respondent for the latter to act as its counsel in the reclassification by the Sangguniang Bayan of Silang, Cavite of complainant's agricultural lot to "residential commercial and/or recreational use" in connection with its Riviera project (Annexes "G" to "G4" of the complaint). Under this contract, respondent was hired to "act as counsel and representative of AFP-RSBS before the Sangguniang Bayan of Silang, Cavite in all matters relative to the reclassification of the subject properties from agricultural to non-agricultural uses." On 21 March 2000, respondent furnished complainant a copy of Resolution No. MI-007, S of 2000 of the Sangguniang Bayan of Silang **dated 21 February 2000** ("resolution") approving the conversion and was paid the amount of Php1.8M (Annex "H" of the complaint). Notably, the resolution was passed on 21 February 2000 or a month before the signing of the said 14 March 2000 contract. Clearly, when [the] 14 March 2000 contract was signed by complainant and respondent, there was already a resolution of the Sangguniang Bayan of Silang approving the conversion of complainant's properties to residential/commercial. Clearly, the Php1.8M demanded and received by respondent is not justifiable for the sole and simple reason that respondent could not have performed any service under the 14 March 2000 contract considering that the result sought by the complainant (reclassification) has been fulfilled and completed as early as 21 February 2000. Respondent, must therefore, be ordered to return this amount to complainant.

On 06 November 2000, complainant entered into another contract for legal services with respondent for which the latter was paid the amount of Php14,000,000.00 to secure Certificate of Registration and License to Sell from the SEC (Annexes "I" to "I-5" of the complaint). In addition, complainant further paid respondent the following checks as professional fees in obtaining the Certificate of Registration and Permit to Offer Securities for shares and other expenses: EPCIB Check No. 443124 dated 13 February 2003 in the amount of Php1,500,000.00, CENB Check No. 74001 dated 29 February 2000 in the amount of Php6,754.00, CENB Check No. 70291 dated 15 September 1999 in the amount Php261,305.00, and LBP Check No. 48691 dated 26 January 2001 in the amount of Php221,970.00.

As complainant's legal counsel, respondent was privy to highly

confidential information regarding the Riviera project which included but was not limited to the corporate set-up, actual breakdown of the shares of stock, financial records, purchase agreements and swapping agreements with its investors. Respondent was also very familiar with the Riviera project[,] having been hired to secure Certificate of Registration and License to Sell with the HLURB and the registration of the shares of stock and license to sell of the Riviera Golf Club, Inc. and Riviera Sports and Country Club, Inc. Respondent further knew that complainant had valid titles to the properties of the Riviera project and was also knowledgeable about complainant's transactions with Phil Golf.

After complainant terminated respondent's services as its legal counsel, respondent became Phil Golf's representative and assignee. Respondent began pushing for the swapping of Phil Golf's properties with that of complainant. Respondent sent swapping proposals to his former client, herein complainant, this time in his capacity as Phil Golfs representative and assignee. These proposals were rejected by complainant for being grossly disadvantageous to the latter. After complainant's rejection of the said proposals, respondent filed a case against its former client, herein complainant on behalf of a subsequent client (Phil Golf) before the HLURB for alleged breach of contract (Annex "R" of the complaint). In this HLURB case, respondent misrepresented that Phil Golf is a duly organized and existing corporation under and by virtue of the laws of the Philippines because it appears that Phil Golfs registration had been revoked as early as 03 November 2003. Despite Phil Golfs revoked Certificate of Registration, respondent further certified under oath that he is the duly authorized representative and assignee of Phil Golf. Respondent, however, was not authorized to act for and on behalf of said corporation because Phil Golfs corporate personality has ceased. The Director's Certificate signed by Mr. Benito Santiago of Phil Golf dated 10 May 2007 allegedly authorizing respondent as Phil Golfs representative and assignee was null and void since the board had no authority to transact business with the public because of the SEC's revocation of Phil Golfs Certificate of Registration.^[2]

Due to the above actuations of respondent, complainant filed the instant action for disbarment.

The IBP's Report and Recommendation

After hearing, the Integrated Bar of the Philippines, Commission on Bar Discipline (IBP-CBD) issued a Report and Recommendation dated June 21, 2010, penned by Investigating Commissioner Victor C. Fernandez, recommending the dismissal of the complaint, to wit:

PREMISES CONSIDERED, it is respectfully recommended that the instant complaint be dismissed for lack of merit.

Respectfully submitted.^[3]

On review, the IBP-BOG reversed the recommendation of the IBP-CBD and recommended the suspension from the practice of law of respondent for a period of

three (3) years and ordering the return of the amount of Php1.8 Million to the complainant within six (6) months. The dispositive portion of the Extended Resolution dated December 28, 2015,^[4] reads:

WHEREFORE, premises considered, the Board RESOLVED to unanimously REVERSE the Report and Recommendation dated 21 June 2010 recommending the dismissal of the Complaint dated 11 March 2008 and instead resolved to suspend respondent from the practice of law for a period of three (3) years and ordered the latter to return the amount of Php1.8 Million to the complainant within six (6) months.

SO ORDERED.^[5]

The IBP-BOG found that respondent violated Rules 15.01, 15.03, 21.01 and 21.02 of the CPR, as well as Article 1491 of the Civil Code.

As provided in Section 12(b), Rule 139-B of the Rules of Court,^[6] the IBP Board forwarded the instant case to the Court for final action.

Issue

The singular issue for the consideration of this Court is whether Atty. Amora should be held administratively liable based on the allegations on the Complaint.

The Court's Ruling

The Court modifies the findings of the IBP-BOG and the penalty imposed on the respondent who violated the Lawyer's Oath and Rules 15.01, 15.03, 21.01 and 21.02 of the Code of Professional Responsibility.

Respondent represented conflicting interests

The Lawyer's Oath provides:

I _____ of _____ do solemnly swear that I will maintain allegiance to the Republic of the Philippines; I will support its Constitution and obey laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any court; I will not wittingly nor willingly promote or sue any groundless, false or unlawful suit, or give aid nor consent to the same; I will delay no man for money or malice, and **will conduct myself as a lawyer according to the best of my knowledge and discretion with all good fidelity as well to the courts as to my clients**; and I impose upon myself this voluntary obligations without any mental reservation or purpose of evasion. So help me God. (Emphasis supplied)

while Rules 15.01 and 15.03 of the Code state:

Rule 15.01. - A lawyer, in conferring with a prospective client, shall ascertain as soon as practicable whether the matter would involve a conflict with another client or his own interest, and if so, shall forthwith inform the prospective client.

Rule 15.03. - A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

The requirement under Rule 15.03 is quite clear. A lawyer must secure the written consent of all concerned parties after a full disclosure of the facts. Respondent, however, failed to present any such document. He points to the fact that complainant approved several transactions between him and the complainant. In his Position Paper dated October 2, 2008,^[7] respondent argues that AFP-RSBS gave its formal and written consent to his status as an investor and allowed him to be subrogated to all the rights, privileges and causes of action of an investor.^[8]

This purported approval, however, is not the consent that the CPR demands.

In *Gonzales v. Cabucana, Jr.*,^[9] the Court ruled that a lawyer's failure to acquire a **written consent** from both clients after a full disclosure of the facts would subject him to disciplinary action:

As we explained in the case of *Hilado vs. David*:

x x x x

In the same manner, his claim that he could not turn down the spouses as no other lawyer is willing to take their case cannot prosper as it is settled that while there may be instances where lawyers cannot decline representation they cannot be made to labor under conflict of interest between a present client and a prospective one. Granting also that there really was no other lawyer who could handle the spouses' case other than him, still **he should have observed the requirements laid down by the rules by conferring with the prospective client to ascertain as soon as practicable whether the matter would involve a conflict with another client then seek the written consent of all concerned after a full disclosure of the facts.** These respondent failed to do thus exposing himself to the charge of double-dealing.^[10] (Emphasis supplied; citation omitted)

Absent such written consent, respondent is guilty of representing conflicting interests.

Moreover, as correctly pointed out by complainant, respondent did not merely act as its investor at his own behest. In a letter dated April 26, 2007,^[11] the respondent wrote AFP-RSBS stating: "Further to our letter dated 24 April 2007 and on behalf of my principal, Philippine Golf Development and Equipment, Inc., x x x" Plainly, respondent was acting for and in behalf of Phil Golf.

Worse, at Phil Golfs instance, he caused the filing of a Complaint dated October 10, 2007^[12] against complainant with the HLURB, stating that he is the duly authorized representative and assignee of Phil Golf and that he caused the preparation of the complaint.^[13]

In *Hornilla v. Salunat*,^[14] We explained the test to determine when a conflict of interest is present, thus: